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ATTORNEY DOCKET NO. W. DIEPSTRATEN 16-2-2 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Wilhelmus J. M. Diepstraten, *et al.*
Serial No.:	09/213,970
Filed:	December 17, 1998
Title:	CONTEXT CONTROLLER HAVING INSTRUCTION-BASED TIME SLICE TASK SWITCHING CAPABILITY AND PROCESSOR EMPLOYING THE SAME
Group:	2154
Examiner:	Larry D. Donaghue

Commissioner for Patents
Washington, D. C. 20231

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Sir:

APPELLANTS' REPLY BRIEF UNDER 37 C.F.R. §1.193

In response to the Examiner's Answer mailed on January 27, 2003, the Appellants submit this Reply Brief in triplicate as required by 37 C.F.R. §1.192.

I. Reply to Examiner's Arguments

In addressing the Appellants' arguments regarding independent Claims 1 and 8, the Examiner cites *In re Keller* to assert that the Appellants can not show non-obviousness by attacking the references individually where the rejections are based on a combination of references. (Examiner's Answer, pages 9 and 10). The Appellants respectfully disagree with the Examiner's reading of *In re Keller*. In *In re Keller*, the appellant offered an affidavit as objective evidence of non-obviousness. *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA) 1981. The court, however, noted that the affidavit concerned itself mainly with the question of whether only one of the cited references (Walsh) suggested the elements of the claimed invention. *In re Keller*, 642 F.2d 413. *In re Keller*, nevertheless, is not applicable to the Appellants' arguments since the Appellants addressed each reference cited against Claims 1 and 8.

Regarding independent Claims 1 and 8, the Appellants argued that the prior art references do not teach or suggest all the claim limitations. More specifically, the Appellants argued that Vaitzblit and Dummermuth, individually or in combination, do not teach or suggest cyclicly activating a context corresponding to another background task when the number of instructions executed with respect to a given background task equals a dynamically-programmable time slice value. (Appeal Brief, pages 10-12). The Appellants, therefore, argued that the first basic criteria for establishing a *prima facie* case of obviousness has not been met by the references Vaitzblit and Dummermuth and , therefore, a *prima facie* case of obviousness has not been established.

Additionally, the Examiner has asserted that the Appellants have addressed various passages in the Vaitzblit reference that go beyond the claimed subject matter of the instant application. (Examiner's Answer, page 9). The Appellants assert, however, that all of the Vaitzblit reference

should be considered. In fact, the prior art reference must be considered in it entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention. *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

The Examiner has also responded that the Appellant, in essence, is alleging the patentable subject matter of the present application is sharing a piece of hardware which is the underlying principle of multi-tasking. (Examiner's Answer, page 10). The Appellants respectfully disagree. The present invention is not simply sharing a piece of hardware for multitasking but managing multitasking in a processor by providing variable instruction-based time slice (which may be thought of as "instruction slice") multitasking in which the time slice value (the number of instructions to be executed with respect to each background task in its allotted time slice) remains fully programmable during execution of the background tasks. (Page 9, lines 4-22).

Furthermore, the Examiner has asserted that not only specific teachings of a reference but also reasonable inferences which an artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. More specifically, the Examiner asserts that Dummermuth suggests the use of a counter which one of ordinary skill in the art would be aware could be written to change the value for each task. (Examiner's Answer, page 11). The Appellants respectfully disagree with the Examiner's assertion. Instead, the Appellants do not believe one skilled in the art would reasonably infer a dynamically programmable slice value since Dummermuth teaches away from changing the value for each task by using a predetermined number of instructions. (Column 7, lines 23-26).

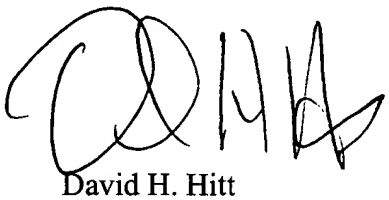
In summary, Vaitzblit and Dummermuth, whether viewed alone or in combination, fail to teach or even suggest switching between background tasks using a dynamically-programmable time slice value as claimed in independent Claims 1 and 8, and thus could not render obvious the present invention associated with Claims 1 and 8 and Claims dependent thereon. Regarding independent Claim 15, Motomora does not cure the deficiencies of Vaitzblit and Dummermuth. Vaitzblit, Dummermuth and Motomura, therefore, whether viewed alone or in combination, fail to teach or even suggest switching between background tasks using a dynamically-programmable time slice value as claimed in independent Claim 15, and thus could not render obvious the present invention associated with independent Claim 15 and Claims dependent thereon.

II. Conclusion

For the reasons set forth above and previously stated in the Appeal Brief, the cited references do not support the Examiner's rejection of Claims 1-22 under U.S.C. §103(a). Accordingly, the Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's Final Rejection of all of the Appellants' pending claims. A check in the amount of $320.00 is enclosed in payment of the filing fee for this communication. However, the Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 08-2395.

Respectfully submitted,

HITT GAINES & BOISBRUN, P.C.



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